

The Orchards
Shanavally
Crookhaven Harbour
Goleen
Co Cork
Ireland

17th February 2020

The Honorable Rebecca Beach Smith
Senior Judge
U.S. District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510
USA

By email rebecca_smith@vaed.uscourts.gov

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Copy to RMST Inc's attorneys Mr Brian Wainger bwainger@kaleolegal.com
Mr David Barger BargerD@gtlaw.com
Mr David Concannon david@davidconcannon.com

Dear Judge Smith:

Re: R.M.S. Titanic, Inc. v. The Wrecked and Abandoned Vessel (Case 2:93-cv-00902-RBS)

I write to you with regard to the above matter.

I am concerned by the possibility that the hull of R.M.S TITANIC may be penetrated, for the reasons expressed herein, in any event, and particularly without proper consultation with interested parties, in first instance Ireland's national interests.

Background

By way of background, I work in the international regulatory world in respect of safety of life at sea and the protection of the maritime environment, including currently as a Consultant with the Maritime Safety Division of the International Maritime Organization (IMO). I have had the honour of working closely with the United States, including co ordinating (work which is ongoing) with the International Ice Patrol that was, of course, set up following the sinking of the R.M.S TITANIC.

I am also, importantly in relation to this matter and its inseparable links with Irish emigration, the Vice Chairman of the Irish Cultural Centre, Hammersmith, London, United Kingdom, and am a native of Crookhaven Harbour, Co Cork Ireland, near the famous Fastnet Lighthouse, affectionately known as the 'Tear Drop of Ireland' as it was the last point in Ireland and the European continent seen by the passengers, of all nationalities, on the mighty liners of the RMS TITANIC era, before heading across the Atlantic to Canada and the United States. Of course, for Irish passengers hoping to make a new life and send money home to support struggling families the fading light from the booming 27 mile beam of the mighty Fresnel Lens of the Fastnet Lighthouse was heart-breaking, and that was the reality at approximately 6-7pm on 11th April 1912 as R.M.S TITANIC headed west past the Fastnet to her tragic destiny.

Additionally at the west end of Crookhaven Harbour sits the remains of the Marconi Brow Head Signalling Station, where my family have farm land, which would have been the last point of contact on the European Continent for R.M.S TITANIC's Marconi Company's officers, Jack Phillips and Harold Bride, before the fateful developments of the ship's desperate and repeated communications 'CQD SOS' received by Cape Race and the surrounding ships three days later on 14th – 15th April 1912.

I have also lectured on the sinking of the R.M.S LUSITANIA, during the centenary anniversary year of 2015, including delivering a talk at United States Coastguard Head Quarters in Washington D.C on 7th December 2015 at the request of the United States Coastguard (attached as ANNEX 1), and whilst doing so, delivered a letter to the USCG from the Community of Co Cork, written by the school children of the region, commiserating with the United States for the loss of the 128 US citizens in the R.M.S LUSITANIA tragedy. (attached as ANNEX 2).

Three days later, on 10th December 2015, following my work on the finalization of the IMO's International Code for Ships Operating in Polar Waters, or the Polar Code, which includes, importantly where the R.M.S TITANIC is concerned, measures for determining a ship's operational limitation capability in ice, I gave the Key Note Address at the International Ice Patrol Headquarters in New London, Connecticut, wherein I explained the impact and connection of the R.M.S TITANIC tragedy on my community in Cork. (attached as ANNEX 3)

As I will mention herein Ireland's approach to the wreck of the R.M.S LUSITANIA and the respect shown by the community of Kinsale and Co Cork for the 128 United States victims, I respectfully submit, is directly relevant to the issues that are before your Court in respect of the R.M.S TITANIC victims, first and foremost, given my heritage, in relation to the Irish victims, but also all the other victims.

It should also be relevant to the Court that much of my own work in international regulation and the drive to make seafarers, and passengers, a little safer stems for the fact that my own father died in a shipping disaster in Bantry Bay, Co Cork, Ireland in 1979 (M.V BETELGEUSE), with 49 other people, 23 of whose bodies were never recovered. I know all

the families involved, and their continuing grief, albeit 42 years later, is incalculable. I therefore have a deep understanding of the sensitivities surrounding tragedy in shipping disasters and the longevity of grief. It should also be noted that I was accompanied to my talk at USCG HQ by a relative of US and Irish citizens, from the same family, who died in the R.M.S LUSITANIA tragedy, as explained in ANNEX 1, and their grief is still very evident today, nearly 105 years later.

For a broader understanding of regulatory developments and work with the United States I attached at ANNEX 4 an article I wrote for the United States Coastguard 'Proceedings' magazine in December 2017 entitled '*Why We Should Care*' which references the \$1.5 billion cost to the insurance industry for the removal of the M.V COSTA CONCORDIA wreck in Italy in 2013. It is noteworthy that in that case one of the overriding reasons for such cost was the need to remove the wreck in one piece rather than penetrating it and cutting it up due to concerns about missing bodies and the fact that it was a crime scene. Deep respect for the dead was shown by the authorities.

Hearing 20th February 2020 and Ireland's interests

Understanding in brief my background, it has come to my attention in international circles following the United States' very commendable ratification of '**The Agreement for the protection of the wreck of the R.M.S TITANIC**', and publicity surrounding the US ratification, that there is a hearing on 20th February where R.M.S Titanic Inc ('RMST Inc') seek permission from your Court to penetrate the hull of the 'R.M.S TITANIC' wreck for the first time, in order to retrieve the Marconi wireless telegraph.

I have had an opportunity to read the documents filed by RMST Inc on 20 January 2020, namely their 'Status Report 01202020' and ANNEX 1, 2 & 3 thereto.

I am copying in this correspondence Assistant US Attorney for the case, Mr Kent Porter, and RMST Inc's attorneys, Mr Brian Wainger, Mr David Barger, and Mr David Concannon.

Ireland's concerns – inadequate stakeholder input

My concerns, are first and foremost for the Irish victims of the R.M.S TITANIC tragedy and their families, but also of course, all the other victims and their families including the heavy death toll suffered by our neighbours in Britain, whom at that time, of course, were fellow compatriots. In combination (Irish and British) we are talking about the memory of 1000 people, many of whom are entombed in the vessel. There is overwhelming evidence from the Senate Commerce Committee hearing that immediately followed the tragedy that hundreds of crew, particularly engineers and stokers did not make it out of the ship, bravely remaining at their posts to fight the ingress of water until they were overwhelmed. Additionally, it is attested by several witnesses that gates to the upper decks where the lifeboats were located were locked, consigning many of the lower-class passengers to their death. For the Irish, their death toll was predominantly derived from the 3rd Class Passenger quarters.

Collectively the Irish and the English suffered by far the highest death toll and this is therefore a matter of significant national interest for the citizens of both nations, but also for other nations such as Sweden and Croatia, and others.

Indeed in my international regulatory work with the IMO, I am currently working closely with Croatia, and upon mentioning this to the Croatian Government officials, the mere mention of it evoked great sensitivity due to the tragic Croatian loss of their passengers from the region of Lika, who were in 3rd Class, and boarded the vessel in Cherbourg. Additionally, of course the Cunard Line vessel R.M.S CARPATHIA was bound for Croatia (with over 70 Croatian crew) when she bravely diverted at full speed to try and rescue as many lives as possible, bringing all survivors back to the United States. I am unclear if Croatian family interests have been consulted, which are explained in detail in their Titanic-Carpathia Museum in Rijeka, Croatia. The hardship suffered by the families left behind in Lika, who had sacrificed everything for their relatives to get to the United States, is tragic. This is similar to the large contingency of passengers who died from the parish of Addergoole in Co. Mayo, Ireland, 11 in total.

The ship is therefore not just an enormous grave site, but a monument to such wider family tragedy and hardship given that those who died were the hope for all family members back home, and that is the starting point – our moral obligation to the victims and their families. I respectfully submit that it overrides all other concerns.

Additionally, of course, to compound Irish and British interests, the ship was built in Ireland at the famous Harland and Wolff Ship Building Yard in Belfast and left from Ireland, her last port of call, my home city of Cork, as I have alluded to above, on 11th April 1912 at 1330.

There is no evidence in the Court documentation to suggest involvement by Irish and British families or national interests. I note that RMST Inc say in their Status Report 01202020 the following:

'Regarding previously discussed partnerships and in line with its overall strategy of preserving the legacy of the R.M.S. Titanic, RMST continues to move forward with its alliance with La Cite de la Mer in Cherbourg and is working to expand this partnership over a multi-year period. RMST is currently in the negotiation phases of similar partnerships with additional institutions to be identified in the coming months, in an effort to unite the Titanic community. These steps are allowing for RMST to increase visibility of and accessibility to the artefacts and corresponding research'.

I am concerned that this does not go anywhere near far enough. It seems clear that further consultation is required.

Ireland's respect for dead of the United States in R.M.S LUSITANIA tragedy

The R.M.S LUSITANIA wreck rests in Irish coastal waters south west of the Old Head of Kinsale in County Cork. This was an enormous tragedy that affected the community of Cork

and Ireland and it was a combined tragedy for Ireland and the United States: 128 US passengers died in the tragedy. Ireland has a preservation order over the wreck preventing any penetration of the hull. The reason is a simple one – it is a grave. Hundreds of men and women went to their death in the hull of the ship.

As will be clear from ANNEX 1, on 7th December 2015 I presented a lecture on the 100th Anniversary of the Sinking of the R.M.S LUSITANIA and I dedicated it to the citizens of the United States who lost their lives in the tragedy because of my, my family, and my communities overwhelming respect for the United States citizens who perished.

There must be a balance between retrieving artefacts and having respect for the dead. It is wonderful I am sure the Court, and all parties concerned copied, will agree, that the leaders of tomorrow, guided by their teachers and community leaders, the children of Kinsale, Co Cork, as can be seen from their letter to the United States (ANNEX 2), have chosen such early leadership principles in humanity, in prioritising the memory of those who died from the United States, over material matters. This approach must be compared with RMST Inc's evidence, and in doing so no disrespect whatsoever is intended to the well-intentioned officers of RMST Inc and their lawyers. In RMST Inc's Status Report 01202020 they state as follows:

'As its primary recovery objective for the 2020 expedition, RMST seeks permission from the Court to recover the Marconi Wireless Telegraph and the associated technical components of the system. RMST outlines the historical importance of the Marconi Wireless Telegraph in a memorandum written by Parks Stephenson, attached hereto as Exhibit 1.

RMST views the recovery and conservation of this historic equipment to be as important as any artifact it has recovered from the wreck site'.

That may be RMST's opinion, but it is important to hear what the children of Kinsale had to say in their letter (ANNEX 2), and their depictions of their thoughts for the victims in their Calendar (ANNEX 5) from which we may all take direction and indeed inspiration:

'We are acutely aware of the significance of this tragedy in our community 100 years ago to the United States, and the loss of 128 of your citizens, and are always mindful that many of the victims rest in our local graveyards.

As part of the Centenary Commemorations the youth of our community through Riverstick Foroige Club, a club that assists the youth of our community to get involved in important projects in a collective and positive manner, and through Kinsale Community School, contributed to a Lusitania Exhibition to commemorate the victims of the tragedy.

Central to the theme of the commemorations and exhibitions was not the mechanics of the ship herself, or the political nature of the sinking, but to remind us of the massive human cost that it brought about and to respectfully honour the dead.

The youth of our community embraced this approach wholeheartedly and have produced a 2016 Lusitania Calendar where the students have drawn pictures to display their impressions of the human nature of the tragedy.

We very much appreciate in Co Cork, and in Ireland, the memory of the victims from the United States, and in recognition of that have asked Michael to present to you one of our Calendars'.

I respectfully submit that there is a school of thought that the equipment that produced the words of distress and sadness that emanated from that room by Marconi Company officer Phillips, and the incoming messages from Cape Race and the rescue vessels should be allowed to rest in peace with those who died. That is not to say that persuasion cannot be employed by RMST Inc but such persuasion requires full consultation.

It seems clear from Mr Stephenson's evidence that there has been enough information to build a replica. It is questionable what additional information can be gleaned from the equipment given that we already know the messages that were sent. Accordingly, it is my personal opinion that, at present, the depth of tragedy and loss far outweighs the need to penetrate the R.M.S TITANIC grave without full discussions.

Certainly, without further information at this stage, at present, I cannot support RMST Inc's proposed entry into the hull of the R.M.S TITANIC to retrieve the Marconi wireless telegraph. It is clear there should be input from the families of those who died.

Ireland's voice as a Nation

It is also my opinion, for the reasons stated, that Ireland's voice as a nation deserves to be heard. I write at a time when Ireland's political landscape is in a state of flux, where we do not have a Government at present following a General Election on 08th February 2020.

Accordingly, it falls to someone like me to engage with your Court, and with the other legal representatives copied, in order to think through a constructive pathway forward, where discussions must take place, and that cannot conceivably happen before the hearing on 20th February. I do not wish to be disruptive, but to promote inclusivity in making the right decision.

Conclusion

Accordingly, I respectfully submit that either the Court goes ahead with a hearing and adjudicates in favour of further consultation and inclusivity of the interests I cite in Ireland and the United Kingdom (and elsewhere), or, with respect for the cost consequences for RMST Inc, that the hearing is adjourned indefinitely until discussions have occurred, and Ireland as a Nation (and others) have had time to explain their interests and sensitivities properly, on behalf of their citizens and those who died.

Whilst I engage with the relevant authorities in Ireland (and the United Kingdom and Croatia), and seek to establish family interests, I respectfully submit that the court liaises with me in the meantime as a point of contact for the Irish interests.

I am prepared to supply the Court with additional information in respect of Irish interests and views, in the absence of formal communication with the Irish Government, if so requested. I am also happy to appear before your Court.

Finally, every best wish to you Judge Smith, and all your colleagues in the incredibly important work that you do upholding rights and protecting, not just US society, but the interests of so many others, as this instance evidences, exercising moral authority that so many of those who managed to have safe passage to the United States rose to contribute to in such an enormous and honourable way. In doing so, I have no doubt that deep thought is always spared for those, from all nations, who were not lucky enough to make it.

Please do not hesitate to contact me for further information.

This letter is counter signed by fellow Cork man and lawyer, Ciarán McCarthy B.L, barrister, lecturer in maritime law at the National Maritime College of Ireland, Cork Harbour (Cobh /Queenstown), and former ship's officer, indicating his support for the contents herein.

Yours sincerely,



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